

# Attachment Two

101st Congress  
1st Session

SENATE

REPORT  
101-1

PROCEDURE FOR THE IMPEACHMENT TRIAL OF  
U.S. DISTRICT JUDGE ALCEE L. HASTINGS  
IN THE UNITED STATES SENATE

REPORT

OF THE

COMMITTEE ON  
RULES AND ADMINISTRATION  
UNITED STATES SENATE

TO ACCOMPANY

S. Res. 38

TO PROVIDE FOR THE APPOINTMENT OF A COMMITTEE TO RE-  
CEIVE AND TO REPORT EVIDENCE WITH RESPECT TO ARTICLES  
OF IMPEACHMENT AGAINST JUDGE ALCEE L. HASTINGS

AND

S. Res. 39

TO PROVIDE FOR THE FILING AND ARGUMENT OF MOTIONS BY  
JUDGE ALCEE L. HASTINGS TO DISMISS ARTICLES OF IMPEACH-  
MENT



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mittee. The charge to such a committee would, then, be limited to hear testimony and receive evidence regarding those articles of impeachment that were not dismissed. The second original resolution reported herein provides for the filing and argument of motions by Judge Hastings to dismiss articles of impeachment.<sup>47</sup>

#### G. RULES OF EVIDENCE

Respondent has requested that the Senate state whether the Federal Rules of Evidence or common law rules of evidence will apply in the Senate proceedings. The Committee finds that no such declaration should be made by it. Any such determination should be made by the body that hears the evidence in the case.

"The Rules of Impeachment" by Stanley Futterman, 24 Kan. L. Rev. 105 (1975) contains a discussion of the evidentiary rules used by the Senate in impeachment proceedings. Futterman states, "... the Senate has understood itself to be making evidentiary determinations under the rules of evidence applicable in courts of law the equity."<sup>48</sup>

In the past, the Senate has determined the admissibility of evidence by looking to Senate precedents rather than court decisions. A Senate vote is the ultimate authority for determining the admissibility of evidence.<sup>49</sup>

In the Claiborne impeachment proceedings, the House managers argued that the Senate is not bound by the Federal rules of Evidence, but they suggested that those rules should be looked to for guidance. The managers were careful to cite to the analogous federal rule when arguing motions.<sup>50</sup>

Professor Burbank concludes that the Claiborne proceedings confirmed the Senate's wisdom in refusing to adopt detailed rules of evidence for impeachment trials and cautions against wholesale borrowing from the Federal Rules of Evidence.<sup>51</sup> Burbank stated, "It is not hard to imagine a trial governed by a detailed body of rules becoming bogged down in technical disputes, with the ascertainment of facts the victim."<sup>52</sup>

Although the Senate applies generally accepted rules of evidence, it would serve no useful purpose to declare any particular system to be supreme. *Impeachment: A Handbook*, (1974) by Professor Charles Black of Yale University, discusses the entire impeachment process. Professor Black suggests that technical rules of evidence designed for juries have no place in the impeachment process.

Both the House and the Senate ought to hear and consider *all* evidence which seems relevant, without regard to technical rules. Senators are in any case continually exposed to 'hearsay' evidence; they cannot be sequestered and kept away from newspapers like a jury. If they cannot be trusted to weigh evidence, appropriately discounting for all the

<sup>47</sup> See Appendix C for text of S. Res. 39, 101st Congress, 1st Session.

<sup>48</sup> *Id.*, 112.

<sup>49</sup> *Cannon's Precedents*, *supra*, § 491.

<sup>50</sup> See S. Hrg. 99-812, Part 1, *supra*, 70-71, 73.

<sup>51</sup> Burbank, "Removal of Federal Judges", *supra*, 692.

<sup>52</sup> *Id.*, 693.

factors of unreliability that have led to our keeping some evidence away from juries, then they are not in any way up to the job, and 'rules of evidence' will not help.<sup>53</sup>

Simpson in "Federal Impeachments", *supra*, discussed rules of evidence in impeachment proceedings. Simpson noted:

... the Senate has invariably received all the evidence which it deemed relevant, from any witness who had personal knowledge of the facts, no matter by whom it was to be proved, and left its weight to be determined upon final consideration.<sup>54</sup>

The Senate must retain its freedom to review evidence issues as they present themselves. The Senate should not restrict itself unnecessarily by making its decision in a vacuum, before the trial has even begun.

#### H. OTHER FAIR TRIAL ISSUES

The House Managers have recommended that the impeachment committee's proceedings should be videotaped to provide an additional means to examine the credibility of witnesses and to overcome other objections to impeachment proceedings before a committee instead of before the full Senate. The Claiborne proceedings were televised to all Senate offices and videotapes were available to Senators.

For the reasons set forth fully in its discussion of the use of an impeachment committee, the Committee believes that the proceedings of the impeachment committee should be televised to all Senate offices and videotaped, and that such videotapes should be made available to Members so that they may examine the proceedings as their schedules permit, without disruption of the other legislative responsibilities of the Senate during this trial.

The Committee finds that the Senate can also assure that Senators have an opportunity to familiarize themselves with the case by delaying floor consideration of the articles of impeachment for a period of time after the parties have concluded their cases before the committee.

During the Claiborne trial, concern was expressed about the lack of time Senators had to review the record before full Senate consideration of the case. Respondent intimates that he will not receive a fair trial if a committee is used to receive evidence because the Senators will not take time to examine transcripts or videotapes prior to full Senate action.

Allowing a period for weighing the evidence will remove even the suggestion that the Senate does not wish to devote the necessary time to the case. By the same token, providing a period for reviewing the evidence will allow the nation's business to go forward. Such a procedure is common practice in the Senate. Hearings are routinely held months before legislation is marked up and voted upon in committee. Frequently, the full Senate vote is taken months after the legislation is reported. In the context of impeach-

<sup>53</sup> *Id.*, 18 (emphasis in the original).

<sup>54</sup> *Id.*, 313.